

CITY OF FORT SMITH
Invitation to Bid
Purchasing Department
623 Garrison Avenue, Room 512
P.O. Box 1908
Fort Smith, AR 72902-1908

BID NO: 4306-11-05BA	SALE OF SURPLUS PROPERTY	Closing Date: Tuesday, November 5, 2019 @ 2:00 PM
---------------------------------------	-------------------------------------	--

**ALL BIDS SUBMITTED SHALL HAVE AN ORIGINAL SIGNATURE. SEALED BIDS
MAY BE RETURNED TO THE ABOVE ADDRESS**

<i>Company</i> <i>(If applicable)</i>	Name: <i>(Print or Type)</i>
<i>Federal Tax I.D. No.</i>	Signature*
<i>Mailing Address</i>	Title
<i>City</i>	Date
<i>State</i> <i>Zip Code</i>	* <u>Authorized Signature:</u> The signer declares under penalty of perjury that she/he is authorized to sign this document and bind the company or organization to the terms of this bid proposal.
<i>Tel. No.</i> <i>Fax No.</i>	
<i>E-Mail</i>	

Sealed bids, subject to the specifications and conditions contained herein and attached hereto, will be received by the City of Fort Smith Purchasing Department, 623 Garrison Avenue, Room 512, until, but no later than 2:00 PM on Tuesday, November 5, 2019, and then publicly opened and read aloud for the Sale of Surplus Property as noted in Exhibit "C" in the City of Fort Smith, Arkansas.

No bid may be withdrawn after the scheduled closing time for receipt of bids for thirty (30) calendar days, with the exception that a bidder shall give notice in writing of their claim of right to withdraw their bid within two business days after the conclusion of the bid opening procedure.

To be considered, your bid must be submitted on this Invitation to Bid document and forwarded to: City of Fort Smith Purchasing Department, 623 Garrison Avenue, Room 512, PO Box 1908, Fort Smith, AR 72902.

Bids shall be returned in a sealed envelope. Mark outside of envelope with “Bid #4306-11-05BA” and clearly labeled “City Surplus Property Bid”.

Time is of the essence and any bid received after the announced time and date for submittal, whether by mail or otherwise, will be rejected. The date and time of receipt shall be determined by the date/time stamp in the Purchasing Department. For all hand delivered bids, bidders are responsible for ensuring that their bid is date/time stamped by Purchasing Department personnel before the deadline indicated. ***Late bids received will be so noted in the bid file and will not be opened.***

Nothing herein is intended to exclude any responsible bidder or in any way restrain or restrict competition. On the contrary, all responsible bidders are encouraged to bid and their bids are solicited.

PROPERTY FACTS AND DESCRIPTION

1. See Exhibit A: Land at 7709 Taylor Avenue; Tract 1 & 2; measures 5.26 acres
2. See Exhibit B: Land between Taylor Avenue, Ward Avenue, and Roberts Boulevard; Tract 3; measures 62.9 acres; was to have become the River Valley Sport Complex (RVSC); please note that the ball field fencing and ball field lighting are not included in the sale.
3. Together, the two adjacent tracts total 68.16 acres.
4. Exhibit C: Map (not to scale).
5. For additional information pertaining to sale of this property, please contact the Purchasing Department at 479-784-2267 or by email at purchasing@fortsmithar.gov.

REQUIREMENTS/CONDITIONS OF SALE

1. The sale and conveyance of said Land to the highest bidder is contingent upon acceptance and approval of the City of Fort Smith Board of Directors. The City will convey merchantable titles subject to recorded easements and rights-of-way.
2. This is an “all or none bid” only.
3. Each bidder shall be required to furnish a deposit of not less than 5% of the total amount offered as a part of, and submitted along with, their bid with the balance due upon award and completion of the sale. Any bid received without the required deposit shall be rejected and not eligible for award.
4. The deposit of the highest bidder shall be held pending completion of the sale. All other deposits submitted shall be promptly refunded. In the event of and if for any reason the

highest bidder's offer is determined unacceptable by the City, the deposit will be promptly refunded.

5. Any deposit and final payment shall be made by certified or cashier's check and made payable to: **CITY OF FORT SMITH.**
6. In the event of two or more identical bids, those bidders will be given an opportunity to submit a new bid in a sealed envelope at the bid opening. The sale and conveyance of said land will be awarded to the highest bidder and will be contingent upon acceptance and approval of the City of Fort Smith Board of Directors. Deposit and final payment shall be made by certified or cashier's check and made payable to: **CITY OF FORT SMITH.**
7. The City of Fort Smith reserves the right to reject any and all bids and to waive any and all irregularities.

TERMS AND SIGNATURE

In compliance with this Invitation to Bid #4306-11-05BA and subject to all conditions thereof, the undersigned offers and agrees to purchase said land, at the price quoted below.

\$ _____

\$ _____
Written Amount

My signature certifies that the accompanying bid is not the result of or affected by any act of collusion with another person(s) or company engaged in the same line of business or commerce, or any act of fraud punishable by law. I hereby certify that I am authorized to sign this bid for the bidder.

Signature

Date

Certificate of Record - Fort Smith District of Sebastian County, Arkansas

Doc #: 7197634
Fee: \$.00
Pages: 25
8/30/2006 13:53:01 PM



ER

Doris Tate, County Clerk and Recorder



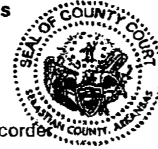
300079

Certificate of Record - Greenwood District of Sebastian County, Arkansas

Doc #: 7197556
Fee: \$.00
Pages: 25
08/29/2006 12:46:37 PM

Jean Sterling

Doris Tate, County Clerk and Recorder



**COVER PAGE FOR FILING OF
SPECIAL WARRANTY DEED**
(Dated August 11, 2006)

*Fort Chaffee Redevelopment Authority
to
City of Fort Smith*

**City of Fort Smith
4105 - 218**

**Return to:
City Clerk's Office
P.O. Box 1908
Fort Smith, AR 72902**

29 0 46

[Exhibit A-7709 Taylor Avenue](#)

SPECIAL WARRANTY DEED

2000080

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, pursuant to the Defense Base Closure and Realignment Act of 1990 (DBCRA), PL 101-510, as amended and codified at 10 U.S.C. 2687, note (BRAC), the military installation known as the Fort Chaffee Military Reservation, Arkansas (FCMR) was closed on September 30, 1997; and

WHEREAS, the Fort Chaffee Redevelopment Authority, acknowledged as the Public Trust for FCMR under Arkansas Code Annotated § 12-63-103 and recognized as the local redevelopment authority for FCMR by the Office of Economic Adjustment on behalf of the Secretary of Defense, was granted the authority to oversee and implement the civilian reuse of the excess portion of FCMR, in accordance with a local-approved reuse plan; and

WHEREAS, the Fort Chaffee Redevelopment Authority made an application to the United States Department of the Army (the "Army") for a no-cost Economic Development Conveyance (EDC) of the lands described herein, under Section 2821 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65); and Section 2905(b)(4) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note) as amended; and

WHEREAS, the Army, as authorized by BRAC and implementing regulations, determined that the EDC application met the criteria for economic development, and job creation; and

WHEREAS, the Army and the Fort Chaffee Redevelopment Authority have entered into a Memorandum of Agreement dated the 5th day of September, 2000 (hereinafter referred to as the "MOA") establishing the terms and conditions for the EDC of portions of the FCMR property, including the property described herein, to the Fort Chaffee Redevelopment Authority; and

WHEREAS, pursuant to the power and authority provided in Section 2905(b)(4) of the DBCRA and the implementing regulations of the Department of Defense (32 CFR Part 91), the Army conveyed to the Fort Chaffee Redevelopment Authority, pursuant to the terms and conditions of the MOA, the parcel of land described herein by three Quitclaim Deeds (the "Government Deeds") dated November 15, 2000, Document No. 7030813; dated

29 0147

[Exhibit A-7709 Taylor Avenue](#)

June 18, 2001, Document No. 7046150, and dated June 4, 2003, Document No. 7105238, recorded in the Deed Records of the Greenwood District of Sebastian County, Arkansas, the provisions of which are incorporated herein by this reference; and

WHEREAS, Section 4.1(o) of the Fort Chaffee Redevelopment Authority Indenture of Trust, dated February 19, 1997 and accepted by the beneficiaries as of April 15, 1997, authorizes the Fort Chaffee Redevelopment Authority to "sell, develop, subdivide, convey, mortgage, pledge, assign, lease, exchange, transfer and otherwise dispose of all or any part of its property or proceeds therefrom, whether at public or private sale....".

NOW THEREFORE, the Fort Chaffee Redevelopment Authority, an Arkansas Public Trust, Grantor, pursuant to the proper resolutions of its Board of Trustees, in consideration of one dollar (\$1.00) and other valuable considerations, the receipt of which is hereby acknowledged, does hereby grant and convey, unto the City of Fort Smith, Grantee, and unto its heirs (successors) and assigns forever, *subject to the reservations and restrictions and conditions hereinafter set out*, the surface only to the following lands (the "Lands") lying and being situated in the County of Sebastian, Greenwood District, State of Arkansas, described in Exhibit "A":

300002

THIS CONVEYANCE is made however, subject to the following reservations and restrictions which are essential to the use of the above described Lands and run with the land:

A. Land Use Restrictions.

1. A Bill of Assurances dated September 13, 2001 and Recorded in the Deed Records of the Fort Smith District of Sebastian County, Arkansas as Document No. 7052866.

2. The Zoning Ordinance for Planned Residential Developments and Planned Commercial Developments Fort Chaffee, Arkansas adopted by Grantor and future amendments thereto.

3. The Design Standards adopted by the Grantor and future amendments thereto.

4. Declaration of Covenants and Restrictions for Chaffee Crossing and future amendments thereto.

B. Minerals. All oil and gas mineral rights are reserved by the Government in the Government Deed and are excluded from this conveyance. Grantor for itself, its successors and assigns reserves from this conveyance all oil, gas, coal and other minerals and mineral rights that are not reserved by the Government in the Government Deed.

C. Easements. Reservation by Grantor for itself, its successors and assigns of a non-exclusive right-of-way over and across the Lands for the continued maintenance, operation and use of existing drive-ways, railroad tracks, spurs and sidings, roads, utilities, wire lines and pipe lines.

D. Government Easements. Reservation by Grantor for itself, its successors and assigns of all easements and restrictions in the Government Deed.

E. Government Restrictions. This conveyance is subject to the easements, conditions and restrictions in the Government Deed, all of which are incorporated herein by reference and made a part hereof.

300003

F. Conveyance. Grantee shall not, within thirty six (36) months after the date of this conveyance, make any sale, assignment or conveyance of the Lands or any part hereof, or enter into any contract for the sale, assignment or the conveyance of the Lands or any part hereof, unless the Grantee has constructed a residence or, if allowed by zoning, a commercial building.

G. Restrictions. Grantee, for itself, its successors and assigns covenants that: (i) the Land will not be used for a bar, tavern, dance hall, pornographic bookstore, pornographic entertainment facility, pornographic video store or any other business whose principal revenues are from the sale of alcoholic beverages, pornographic movies, pornographic merchandise or pornographic entertainment; (ii) the Land will not be used to construct, operate or maintain an antenna structure or communication tower.

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, Grantee covenants with Grantor that:

A. Mortgage. Grantee shall not mortgage, pledge or encumber the Lands or permit any lien to be attached to the Lands except for the purpose of obtaining funds required to purchase the Lands or erect improvements on the Lands.

B. Required Improvements. Grantee shall complete construction of the Required Improvements, if any, described in the Contract on or before the third anniversary of this conveyance.

C. No Speculation. Grantee is acquiring the Lands for the purpose of constructing a residence(s) or, if allowed by zoning, a commercial building for resale. Grantee is not acquiring the Lands for land speculation purposes.

D. Deed Restriction. The real property specifically described herein conveyed to the Grantee, and all heirs and assigns of Grantee, shall not be annexed into any other municipality without the consent of the municipality in which it is presently located for a period of sixty (60) years from July 1, 2002. By acceptance of this Deed, during that period of time, the Grantee and all heirs and assigns of the Grantee, forever waive and disclaim, and agree to forego and forebear, any right to request annexation, or to become annexed into, any other municipality whether that right is derived from Act 779 of the 1999 Arkansas General Assembly or any other statutory or common law of the State of Arkansas or the United States. This covenant is intended to and shall be a covenant running with the land.

300084

This conveyance is specifically conditioned on the following:

1. CERCLA Covenants and Notice

Pursuant to Sections 120(h)(3) and 120 (h)(4) of the CERCLA:

A. Notification and Covenants.

The United State of America (the, "Government") has notified the Grantor that to the extent such information is available on the basis of a complete search of agency files, there was no storage and release of hazardous substances, petroleum, petroleum products or their derivatives on certain portions of the Land, and there was storage and release of hazardous substances on other portions of the Land. For the purpose of this Deed, "hazardous substances" shall have the same meaning as section 101(14) of CERCLA. Available information regarding the type, quantity and location of the hazardous substances found on the Land and action taken is contained in "Notice of Petroleum Product Storage, Release, or Disposal" that is at Exhibit E to the Government Deed. The information regarding said storage and release indicates that there is no threat to human health or the environment on the Land.

B. Access Rights and Easement

The Government reserves a right and easement for access to the Lands in any case in which remedial action or corrective action is found to be necessary after the date of the Government Deed. Any such actions undertaken by the Government pursuant to this Section 1(B) will, to the maximum extent practicable, be coordinated with a representative of the Grantee, its successors and assigns. Grantee agrees that, notwithstanding any other provisions of the Deed, that the Government and the Grantor assume no liability to the Grantee, its successors and assigns, or any other person, should remediation of the Lands interfere with the use of the Lands by the Grantee, its successors and assigns.

C. Transfer Documents

The Grantee and its successors and assigns covenant and agree that all leases, transfers or conveyances of the Lands occurring subsequent to the date of this Deed shall be made subject to, and shall have the benefit of, the provisions contained in this Section 1.

2. Environmental Baseline Survey ("EBS") and Finding of Suitability to Transfer ("FOST")

300085

A. The Grantee has had the opportunity to review the technical environmental reports, including the Environmental Baseline Study (the "EBS") for the Lands dated October 7, 1996, and FOST I, II, III and IV for the Lands prepared by the Government, and agrees, that these documents accurately describe the environmental condition of the Lands. The Grantee has inspected the Lands and accepts the physical condition and current level of environmental hazards on the Lands and deems the Lands to be safe for the Grantee's intended use. If an actual or threatened release of a hazardous substance or petroleum product is discovered on the Lands after the date of the conveyance, whether or not such substance was set forth in the technical environmental reports, including the EBS, Grantee or its successors or assigns shall be responsible for such release or newly discovered substance unless Grantee is able to demonstrate that such release or such newly discovered substance was due to the Government's activities, ownership, use, or occupation of the Lands. Grantee, its successors and assigns, as consideration for the conveyance, agree to release the Government and the Grantor from any liability or responsibility for any claims arising solely out of the release of any hazardous substance or petroleum product on the Lands occurring after the date of this Deed, where such substance or product was placed on the Lands by the Grantee, or its successors, assigns, employees, invitees, agents or contractors, after this conveyance. This Section 2 shall not affect the Government's responsibilities to conduct response actions or corrective actions that are required by applicable laws, rules and regulations or the Government's indemnification obligations under applicable laws.

B. All covenants and land use restrictions shall inure to the benefit of the public in general and adjacent lands, including lands retained by the United States, and, therefore, are enforceable by the United States Government and the State of Arkansas. These restrictions and covenants are binding on the GRANTEE, its successors and assigns; shall run with the land; and are forever enforceable.

C. The GRANTEE covenants for itself, its successors and assigns, that it shall include and otherwise make legally binding all land use restrictions herein in each subsequent lease, transfer or conveyance document subject hereto. Notwithstanding this provision, failure to include these land use restrictions in subsequent conveyances does not abrogate the status of these restrictions as binding upon the parties, their successors and

assigns.

300006

D. The GRANTEE, for itself, its successors and assigns, covenants that it will not undertake or allow any activity on or use of the Lands that would violate the land use restrictions contained herein.

3. Asbestos Burial Site.

Asbestos Burial Sites (ABS) are located at the former Buildings 4111 and 5063. The ABS are legally described under "RESTRICTIONS" at Exhibit A to the Government Deed, and are as depicted at Exhibit C to the Government Deed. The GRANTEE on behalf of itself, its successors and assigns, covenants and agrees that the GRANTEE or the then record owner of the Lands will be fully responsible for any investigation and/or remediation of hazardous substances, pollutants or contaminants, or petroleum or petroleum derivatives at any ABS on the Lands, to the extent that such investigation and/or remediation becomes necessary in response to a violation of the land use restrictions in this Section.

A. Soil Excavation Restrictions.

The GRANTEE, its successors and assigns, shall not conduct or permit others to: (1) conduct any excavation, digging, drilling, or other disturbance of any ABS on the Lands without prior written approval of the GOVERNMENT or (2) construct any subsurface structure for human occupation on any ABS on the Lands without the prior written approval of the GOVERNMENT, and the Arkansas Department of Environmental Quality (ADEQ). If the GRANTEE, its successors or assigns, encounter ground water or contaminated soil while conducting any excavation activities at any ABS on the Lands, the GRANTEE, its successors or assigns, will immediately cease such activities until the GOVERNMENT'S written approval is obtained allowing such activities to continue. In granting excavation approval under this Subsection, the GOVERNMENT may impose reasonable terms and conditions, on a case by case basis, that the GOVERNMENT deems necessary to (i) protect human health and the environment and (ii) to ensure proper disposal of contaminated material at no expense to the GOVERNMENT OR GRANTOR.

B. Remediation. The GRANTEE covenants for itself, its successors and assigns, that nothing contained herein shall preclude the GRANTEE from undertaking, in accordance with applicable laws and regulations, such

30008
additional remediation necessary to allow for residential use of any ABS on the Lands. Any additional remediation will be at no additional cost to the GOVERNMENT or GRANTOR and with the GOVERNMENT'S prior written consent. Consent may be conditioned upon such terms and conditions as the GOVERNMENT deems reasonable and appropriate, including performance and payment bonds and insurance. Upon completion of such remediation required to allow residential use of any ABS on the Lands and upon the GRANTEE's obtaining the approval of the Arkansas Department of Environmental Quality (ADEQ) and, if required, any other regulatory agency, the GOVERNMENT agreed in the Government Deed, to release or, if appropriate, modify this restriction by executing and recording, in the same land records of the State of Arkansas as the deed, a Partial Release of Covenant. GRANTEE shall bear the cost of recording and reasonable administrative fees.

4. Notice of The Presence of Asbestos And Covenant.

A. The GRANTEE is hereby informed and does acknowledge that friable and non-friable asbestos or asbestos-containing materials ("ACM") has been found on the areas described in the table entitled "Asbestos Containing Materials" of FOST II (Exhibit F-2 to the Government Deed). The locations and conditions of ACM are as described in the EBS for which the GRANTEE acknowledges receipt of and understanding. Except as provided for in paragraphs B and C below, the ACM on the Lands does not currently pose a threat to human health or the environment. Except as provided for in paragraphs B and C below, all asbestos or ACM that posed a risk to human health has either been removed or encapsulated by the GOVERNMENT.

B. Several buildings have been determined to contain friable and non-friable asbestos that may pose a threat to human health. Buildings containing friable and/or non-friable ACM, with location and condition, are summarized in Table 5 "Asbestos Containing Materials" of FOST II (Exhibit F-2 to the Government Deed). Detailed information is contained in the EBS and referenced asbestos surveys. The GOVERNMENT conveyed said buildings and structures to the GRANTOR, prior to remediation of asbestos hazards, in reliance upon the GRANTOR's express representation and promise that the GRANTOR will, prior to use or occupancy of said buildings, demolish said buildings or the portions thereof containing friable asbestos, disposing of ACM in accordance with applicable laws and regulations. With respect to the friable asbestos in buildings and structures on

the Lands, the GRANTEE specifically agrees to undertake any and all abatement or remediation that may be required under CERCLA 120(h)(3) or any other law or regulation. The GRANTEE acknowledges that the consideration for the conveyance of the Lands was negotiated based upon the GRANTEE's agreement to the provisions contained in this Subsection.

300068

C. The GRANTEE acknowledges it has been notified that at the sites of former Buildings 4111 and 5063, which were destroyed by fire, all debris, including asbestos, was buried inside the foundation walls. The two former building sites were covered with a clay cap and designated as "no dig" asbestos burial areas. These locations have asbestos warning signs. If the Lands include former buildings 4111 and 5063, the GRANTEE and any future owners will be restricted from digging and will be required to maintain the warning signs, cap and ground cover maintenance for these two sites. Section 3 of these conditions contains specific land use restrictions for these two sites.

D. The GRANTEE covenants and agrees that its use and occupancy of the Lands will be in compliance with all applicable laws relating to asbestos; and that the GOVERNMENT and GRANTOR assume no liability for any future remediation of asbestos or damages for personal injury, illness, disability, or death, to the GRANTEE, its successors or assigns, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos or ACM on the Lands, whether the GRANTEE, its successors or assigns have properly warned or failed to properly warn the individual(s) injured. The GRANTEE agrees to be responsible for any future remediation of asbestos found to be necessary on the Lands. The GRANTEE assumes no liability for damages for personal injury, illness, disability, death or property damage arising from (i) any exposure or failure to comply with any legal requirements applicable to asbestos on any portion of the property arising prior to the GRANTOR's conveyance of such portion of the Lands to the GRANTEE pursuant to this Deed or (ii) any disposal, prior to the GRANTOR's conveyance of the property of any asbestos or ACM.

E. Unprotected or unregulated exposures to asbestos in product manufacturing, shipyard and building construction workplaces have been associated with asbestos-related diseases. Both Occupational Safety and Health

Administration (OSHA) and the Environmental Protection Agency (EPA) regulate asbestos because of the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers and which can result in disability or death.

F. The GRANTEE acknowledges that it has inspected the Lands as to its asbestos content and condition and any hazardous or environmental conditions relating thereto prior to accepting the responsibilities imposed upon the GRANTEE under this section. The failure of the GRANTEE to inspect, or to be fully informed as to the asbestos condition of all or any portion of the Lands offered, will not constitute grounds for any claim or demand against the United States, or any adjustment under this Deed. The GRANTEE shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Lands, including, without limitation, any asbestos hazards or concerns.

G. The GRANTEE further agrees to indemnify and hold harmless the GOVERNMENT and the GRANTOR, its officers, agents and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs and attorneys' fees arising out of, or in any manner predicated upon, exposure to asbestos on any portion of the Lands after this conveyance of the Lands to the GRANTEE or any future remediation or abatement of asbestos or the need therefore. The GRANTEE's obligation hereunder shall apply whenever the United States incurs costs or liabilities for actions giving rise to liability under this section. Furthermore, the GRANTEE agrees to make no claim or demand against the United States or Grantor based on the presence of asbestos or ACM in buildings and structures on the Lands.

5. Lead-based Paint Warning And Covenant.

A. The GRANTEE is hereby informed and does acknowledge that all buildings on the Lands, which were constructed or rehabilitated prior to 1978, are presumed to contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Every purchaser of any interest in Residential Real Property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in

30009
young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. "Residential Real Property" means dwelling units, common areas, building exterior surfaces, and any surrounding land, including outbuildings, fences and play equipment affixed to the land, available for use by residents but not including land used for agricultural, commercial, industrial, or other non-residential purposes, and not including paint on the pavement of parking lots, garages, or roadways and buildings visited regularly by the same child, 6 years of age or under, on at least two different days within any week, including day-care centers, preschools and kindergarten classrooms.

B. Certain land tracts in FOST II (Exhibit F-2 to the Government Deed) have been identified for use after transfer for residential or other child occupied purposes (e.g., day care centers preschools, and kindergarten classrooms visited regularly by children under 6 years of age). The existing structures within these tracts have not been used as residential or other child occupied facilities and are planned for demolition; however, such structures were erected prior to 1978 when lead based paint ("LBP") was commonly used throughout the United States, including at military installations. The age of the structures within these tracts suggests the likelihood that LBP may be present on many of these structures. This in turn creates the possibility that through the action of normal weathering and maintenance (e.g., scraping and repainting) there is lead from LBP in the soil surrounding these structures.

The EPA has concluded that the release of lead to soils from LBP from structures falls within the CERCLA definition of a hazardous release, but to date EPA has not developed generally applicable standards for the remediation of lead in soils from LBP in currently non-residential areas. Nevertheless, because of the expected future presence of children under six in newly constructed residential or other child occupied facilities on these tracts, there may be significant risks of adverse health effects. EPA's *Interim Soil Lead Guidance for CERCLA Sites and RCRA Corrective Action Facilities*; July 14, 1994 does establish risk-based screening levels at 400 ppm for lead

concentrations in soil. While screening levels should not necessarily be considered as clean-up levels, further evaluation is advised when these levels are exceeded and residential reuse is anticipated.

30009

C. Available information concerning known lead-based paint and/or lead-based paint hazards, the location of lead-based paint and/or lead-based paint hazards, and the condition of painted surfaces is contained in the EBS, and (for residential properties) the lead-based paint inspection and risk assessment, which have been provided to the GRANTEE.

D. The GRANTEE acknowledges that it has received the opportunity to conduct its own risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards prior to execution of this document.

E. The GRANTEE covenants and agrees that it shall not permit the occupancy or use of any buildings or structures on the Lands as Residential Real Property, as defined in paragraph A, above, without complying with this section and all applicable federal, state, and local laws and regulations pertaining to lead-based paint and/or lead-based paint hazards. Prior to permitting the occupancy of the Lands where its use subsequent to sale is intended for residential habitation, the GRANTEE specifically agrees to perform, at its sole expense, the Army's abatement requirements under Title X of the Housing and Community Development Act of 1992 (Residential Lead-Based Paint Hazard Reduction Act of 1992) (hereinafter Title X).

The GRANTEE shall, after consideration of the guidelines and regulations established pursuant to Title X:

- (1) Perform a Risk Assessment if more than 12 months have elapsed since the date of the last Risk Assessment;
- (2) Comply with the joint HUD and EPA Disclosure Rule (24 CFR 35, Subpart H, 40 CFR 745, Subpart F), when applicable, by disclosing to prospective purchasers the known presence of lead-based paint and/or lead-based paint hazards as determined by previous risk assessments;
- (3) Abate lead dust and lead-based paint hazards in pre-1960 residential real property, as defined in paragraph A, above, in accordance with the procedures in 24 CFR 35;
- (4) Abate soil-lead hazards in pre-1978 residential real property, as defined in paragraph A, above, in accordance with the procedures in 24 CFR 35;
- (5) Abate lead-soil hazards following demolition and redevelopment of structures in areas that will be developed as residential real property;
- (6) Comply with the EPA lead-based paint work standards

29-157A

when conducting lead-based paint activities (40 CFR 745, Subpart L); (7) Perform the activities described in this paragraph within 12 months of the date of the lead-based paint risk assessment and prior to occupancy or use of the residential real property; and (8) Send a copy of the clearance documentation to the GRANTOR AND THE GOVERNMENT.

In complying with these requirements, the GRANTEE covenants and agrees to be responsible for any abatement or remediation of lead-based paint or lead-based paint hazards on the Lands found to be necessary as a result of the subsequent use of the property for residential purposes. The GRANTEE covenants and agrees to comply with solid or hazardous waste laws that may apply to any waste that may be generated during the course of lead-based paint abatement activities.

F. The GRANTEE further agrees to indemnify and hold harmless the Government, the Army, the GRANTOR and their officers, agents and employees, from and against all suits, claims, demands, or actions, liabilities, judgments, costs and attorney's fees arising out of, or in a manner predicated upon personal injury, death or property damage resulting from, related to, caused by or arising out of lead-based paint or lead-based paint hazards on the Lands if used for residential purposes.

G. LBP can be properly managed in place, provided the following precautions are taken by the GRANTEE: 1) If LBP is present in the soil surrounding the Lands, ground cover must be maintained in order to prevent soil disturbance. 2) The condition of painted surfaces within buildings containing LBP should be maintained to prevent chipping and dust. The demolition of the existing structures necessary to create residential or other child-occupied facilities on the tracts will greatly affect the risks associated with lead from LBP (improper demolition could exacerbate existing levels of lead in the soil, and the disturbance of soils in the vicinity of the existing structures could render any existing lead in the soils unavailable and thus of no risk). Post-demolition lead levels can be reduced as well, by removing one to three inches of surface soil at each building site following demolition. Because the demolition of the existing structures will be carried out by the GRANTEE of the Lands, the GRANTEE shall sample the soil and abate the soil as necessary to protect human health and to achieve the standards established for federal agencies by 24 CFR Part 35 and any required remediation requirements placed on the

GRANTEE of the Lands.

300093

H. The covenants, restrictions, and requirements of this Section (5) shall be binding upon the GRANTEE, its successors and assigns and all future owners and shall be deemed to run with the land. The GRANTEE on behalf of itself, its successors and assigns, covenants that it will include and make legally binding, this Section (5) in all subsequent transfers, leases, or conveyance documents.

6. Notice of the Presence of Polychlorinated Biphenyls (PCB).

A. The GRANTEE is hereby informed and does acknowledge that equipment containing PCBs may exist on the Lands to be conveyed, described as follows: fluorescent light ballasts. All PCB containing equipment has been properly labeled in accordance with applicable laws and regulations in force at the time of purchase and installation to provide notification to future users. Any PCB contamination or spills related to such equipment has been properly remediated by the Government prior to conveyance. The PCB equipment does not currently pose a threat to human health or the environment.

B. Upon request, the Army has agreed to furnish to the GRANTEE any and all records in its possession related to such PCB equipment necessary for the continued compliance by the GRANTEE with applicable laws and regulations related to the use and storage of PCBs or PCB containing equipment.

C. The GRANTEE covenants and agrees that its continued possession, use and management of any PCB containing equipment will be in compliance with all applicable laws relating to PCBs and PCB containing equipment, and that the Army and the Grantor assume no liability for the future remediation of PCB contamination or damages for personal injury, illness, disability, or death to the GRANTEE, its successors or assigns, or to any other person, including members of the general public arising from or incident to future use, handling, management, disposition, or other activity causing or leading to contact of any kind whatsoever with PCBs or PCB containing equipment, whether the GRANTEE, its successors or assigns have properly warned or failed to properly warn the individual(s) injured. The GRANTEE agrees to be responsible for any future remediation of PCBs or PCB containing equipment found to be necessary on the Lands.

300094

7. Notice of the Presence of Pesticides

A. The Grantee is hereby informed and does acknowledge that the potential exists in all buildings for pesticides, including chlordane, 4,4-DDD, 4,4-DDE, and 4,4-DDT, to be present at the drip line or under building foundation slabs at concentrations above residential and industrial screening levels. The presence of these products is a result of their intended use application as pesticides. The presence of pesticides does not currently pose a threat to human health or the environment. The potential presence of pesticides, however, must be taken into consideration prior to any building demolition.

B. Upon request, the Army agreed to furnish to the Grantee any and all records in its possession related to the use of pesticides necessary for the continued compliance by the Grantee with applicable laws and regulations related to the use of pesticides.

C. The Grantee covenants and agrees that its continued possession, potential use and continued management of all buildings will be in compliance with all applicable laws relating to hazardous substance/pesticides and hazardous wastes, and that the Army and the Grantor assume no liability for the future remediation of pesticide contamination or damages for personal injury, illness, disability, or death to the Grantee, its successors or assigns, or to any other person, including members of the general public arising from or incident to future use, handling, management, disposition, or other activity causing or leading to contact of any kind whatsoever with chlordane, whether the Grantee, its successors or assigns have properly warned or failed to properly warn the individual(s) injured. The Grantee agrees to be responsible for any future remediation of pesticides found to be necessary on the Lands.

8. Notification of Ordnance and Explosives ("OE") and Covenant.

A. Fort Chaffee is a former military installation with a history of OE use and, therefore, there is a potential for OE to be present on the Lands.

B. Based on a review of existing records and available information, none of the buildings or Lands are known to contain high explosive unexploded ordnance ("UXO"). However, blank small arms ammunition may exist on the Lands. The risk from blank ammunition is negligible since no projectile or high explosive is present. In the

event the GRANTEE, its successors, and assigns, should discover any UXO on the Lands, it shall not attempt to remove or destroy it, but shall immediately contact the nearest County Sheriff or local law enforcement agency who will, if needed, contact the Department of Defense Explosive Ordnance Disposal (EOD) unit. Appropriate GOVERNMENT or GOVERNMENT designated explosive ordnance personnel will be dispatched promptly to dispose of such UXO at no expense to the GRANTEE. The GRANTEE, or its successors or assigns, shall: (i) cooperate with the GOVERNMENT with regard to the location of and removal of UXO from the Lands, provided such cooperation does not require the GRANTEE, or its successors or assigns, to incur any non-reimbursed direct costs, (ii) notify the GOVERNMENT as soon as reasonably possible after the discovery of any UXO by the GRANTEE, or its successors or assigns, and (iii) take no actions regarding UXO discovered on the Lands, except as may be specifically directed by the GOVERNMENT.

9. Notice of Endangered Species and Covenant.

A. The GRANTEE is hereby informed and does acknowledge the presence of an endangered species, the American Burying Beetle (ABB) (*Nicrophorus americanus*), on the Lands.

B. The GRANTEE covenants and agrees that its use and occupancy of the Lands will be in compliance with the Endangered Species Act (ESA) of 1973, as amended, (16 U.S.C. § § 1531-1544; 50 CFR Parts 17, 401-424, 450-453). The ESA requires protection of threatened or endangered species by prohibiting activities and facilities that would have an adverse effect on them.

C. Section 9 of the ESA and federal regulations pursuant to section 4(d) of the ESA prohibit the take of endangered and threatened species, respectively without special exemption. Under the terms of Section 7(b)(4) and Section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the ESA provided that such taking is in compliance with the terms and conditions of this incidental take statement.

D. Certain non-discretionary measures undertaken by the Department of the Army at Fort Chaffee (Army) are binding conditions upon GRANTEE for the exemption in Section 7(o)(2) to apply. Required consultation with the U.S. Fish and Wildlife Service (USFWS) has been completed. Based on the Biological Opinion issued in June,

1999 (Exhibit H to the Government Deed), certain “reasonable and prudent measures” are necessary to minimize impacts of incidental take of ABB’s in the EDC areas and must be incorporated as restrictions in the deed. Accordingly, the GRANTEE covenants that the following “reasonable and prudent measures” will be adhered to immediately upon transfer of property to protect the ABB and its habitat:

1. Undeveloped areas should not be cleared until construction is ready to commence. In addition, unnecessary clearing of trees or other vegetation during site preparation should be avoided.

2. Whenever possible, construction and other ground disturbance activities shall be conducted during the non-breeding season, October through April.

3. Because of the sensitivity of the ABB to chemical applications, the GRANTEE shall ensure that the use of pesticides and herbicides is limited. Only those pesticides and herbicides on the list approved by the USFWS shall be used.

E. The GRANTEE further agrees that it shall not permit the occupancy or use of any buildings, facilities or structures on the Lands without complying with the ESA, and all applicable federal, state, and local laws and regulations pertaining to endangered species.

F. Any questions concerning reasonable and prudent measures should be directed to the U.S. Fish and Wildlife Service, Arkansas Field Office; 1500 Museum Road, Suite 105; Conway, AR 72032, telephone 501-513-4477, or to its successor.

10. Inclusion of Provisions.

The GRANTEE, its successors and assigns, or any entity to whom the Lands are transferred shall neither transfer the Lands, lease the Lands, nor grant any interest, privilege, or license whatsoever in connection with the Lands without the inclusion of the environmental protection provisions contained herein, and shall require the inclusion of such environmental protection provisions in all further deeds, transfers, leases, or grants or any interest, privilege or license.

11. Air Navigation Restriction.

The Fort Smith Municipal Airport is in close proximity to the Lands. The Lands lie within the area of protected

300097

airspace that normally extends for a five nautical mile radius around the airfield. Accordingly, in coordination with the Federal Aviation Administration (FAA), the GRANTEE covenants and agrees on behalf of it, its successors and assigns and every successor in interest to the Lands herein described, or any part thereof, that, when applicable, there will be no construction or alteration unless a determination of no hazard to air navigation is issued by the Federal Aviation Administration in accordance with Title 14, Code of Federal Regulations, Part 77, entitled Objects Affecting Navigable Airspace, or under the authority of the Federal Aviation Act of 1968, as amended.

12. Notice of Non-Discrimination.

With respect to activities related to the Lands, the GRANTEE covenants for itself, its successors and assigns, that the GRANTEE, and such successors and assigns, shall not discriminate upon the basis of race, color, religion, sex, age, handicap, or national origin in the use, occupancy, sale or lease of the Lands, or in their employment practices conducted thereon in violation of the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. Section 2000(d)); the Age Discrimination Act of 1975 (42 U.S.C. Section 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794). The GOVERNMENT shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the Lands hereby conveyed, and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

13. Indemnity. Grantee, its successor and assigns, shall indemnify and hold Grantor harmless from all liability loss or expense, including attorneys fees and court costs, arising from a breach by Grantee of the covenants and agreements of Grantee herein.

THIS CONVEYANCE IS SUBJECT TO THE RIGHT OF GRANTOR TO REPURCHASE THE LANDS.

As an inducement to Grantor to convey the Lands to Grantee, and as additional consideration for this conveyance, Grantee grants to Grantor the right to repurchase the Lands if:

1. Grantee fails to construct all Required Improvements described in the Contract within 36 months after the date of this conveyance (the "Development Period"); or
2. Grantee contracts to sell the Lands within the Development Period; or
3. Grantee abandons construction of the Required Improvements during the Development Period.

300098

For purposes of this Right to Repurchase, "abandons" "abandoned" or "abandonment" means: (i) cessation of construction or installation of infrastructure consistent with the Required Improvements for a period of 60 days without prior written authorization of Grantor; or (ii) cessation of construction of structures consistent with the Required Improvements for a period of 60 days without prior written authorization of Grantor. In the event that Grantee contracts to sell the Lands within the Development Period, Grantee shall notify Grantor in writing not more than 30 days subsequent to the execution of such contract of sale (the "Notice of Sale"). The Notice of Sale shall contain the name and address of the proposed purchaser and shall contain a copy of the Contract of Sale. The right to repurchase shall be exercised by Grantor's written notice to Grantee within 45 days after receipt of the Notice of Sale, or by Grantor's written notice to Grantee within 45 days after the end of the Development Period if Grantee does not construct the Required Improvements; or by Grantor's written notice to Grantee within 45 days after abandonment. The right to repurchase shall be on the following terms:

(i) the price paid for the Lands shall be the "Repurchase Price" (as hereinafter defined), plus or minus prorations of general real estate taxes and other proratable items described herein;

(ii) Grantee shall convey by warranty deed good and marketable and insurable title to the Lands to Grantor or Grantor's designee;

(iii) Grantee shall bear all costs of closing and title insurance in the amount of the Repurchase Price. The Repurchase Price shall be the cash consideration received by Grantor for this conveyance plus the actual verifiable costs of any improvements made by Grantee to the Lands after the date of this conveyance which costs will be established by copies of paid bills and canceled checks delivered to Grantor either at the time of providing the Notice of Sale or upon receipt of notice from Grantor that Grantee's development of the Lands was not completed within the Development Period or that Grantee abandoned construction of the Required Improvements. If Grantor notifies Grantee within the aforesaid 45 day period of its election to exercise its Right to Repurchase, then such repurchase transaction shall close within 60 days after Grantor provides notice of such election.

If Grantor exercises its Right to Repurchase, then Grantee agrees to reconvey the Lands to Grantor in the same physical condition as at closing, except for improvements made to the Lands by Grantee. If Grantor gives

300099
written notice to Grantee within said 45 day period, that it does not elect to exercise the Right to Repurchase, or if Grantor fails to give written notice to Grantee during the 45 day period, then Grantor's right to repurchase the Lands shall be suspended and Grantee may proceed to close the proposed sale; provided, however, that if Grantee fails to close the proposed sale on the terms and conditions contained in the Notice of Sale, the Right to Repurchase shall remain in effect and shall be applicable to any other sale by Grantee within the Development Period. Any sale, assignment or conveyance of the lands by Grantee in violation of the provisions of this conveyance shall be null and void and of no force and effect. The words "resale", or "sale" shall include among other definitions, any sale, transfer, contract for deed, corporate transfer or other voluntary conveyance of the Lands, any partnership interest in any partnership owning an interest in the Lands, any lease with an option to purchase the lands or any conveyance or transfer which tends directly or indirectly to cause the transfer of the right of ownership in the Lands.

Grantee acknowledges that the Required Improvements are consistent with the Grantor's comprehensive development plan and that the Grantor and other interested purchasers of property owned by Grantor are relying on the development of the Lands by Grantee and construction of the Required Improvements in order to formulate their respective development plans in the overall comprehensive redevelopment of the former Fort Chaffee Military Reservation.

508/00

TO HAVE AND TO HOLD, the same unto the said City of Fort Smith and unto its heirs, (Successors) and assigns forever, subject to the reservations restrictions and conditions provided herein, together with all and singular the tenements, appurtenances and hereditaments thereunto belonging or in any wise appertaining.

AND, the Fort Chaffee Redevelopment Authority hereby covenants with the City of Fort Smith that it will warrant and defend the title to the Lands against all claims and encumbrances done or suffered by or through it, but against none other.

IN WITNESS WHEREOF, the Fort Chaffee Redevelopment Authority has caused these presents to be executed by its duly authorized Chairman and Secretary and Grantee, in acceptance of the covenants, reservations, conditions and exceptions, has caused these presents to be executed this 11th day of August, 2006

GRANTEE:



Grantee

GRANTOR:

FORT CHAFFEE REDEVELOPMENT
AUTHORITY

By: 
Chairman

ATTEST:


Secretary

APPROVED:


Executive Director

ACKNOWLEDGMENT

300101

STATE OF ARKANSAS

COUNTY OF SEBASTIAN

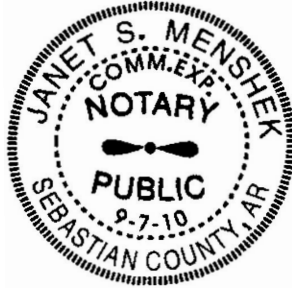
) ss.
)

On this 11th day of August, 2006, before me, a Notary Public, duly commissioned, qualified and acting within and for said County and State, appeared in person the within-named Jerry Stewart and J. Michael Milton, to me personally well known, who stated that they are the Chairman and Secretary of the Fort Chaffee Redevelopment Authority, a public trust, and further stated that they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have set my hand and official seal this 11th day of August, 2006.

Janet S. Menshek
NOTARY PUBLIC

My Commission Expires:
9/7/10



300102

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF SEBASTIAN)

On this 11 day of August, 2006 before me, a Notary Public, duly commissioned,
qualified and acting within and for said County and State, ~~appeared in person~~ the within-named
Kay Baker, to me personally well known, who stated that he/she was the Grantee of the
C. Smith and further stated that he/she had so signed, executed and delivered said foregoing
instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have set my hand and official seal this 11 day of
August, 2006

Christy Deuster
NOTARY PUBLIC

My Commission Expires:

7-1-2016



EXHIBIT A
REAL PROPERTY DESCRIPTION

200103

TRACT 1:

Part of the Northeast—Quarter (NE/4) of the Northeast—Quarter (NE/4) of Section 9, T—7—N, R—31—W, Fort Smith, Sebastian County, Arkansas, more particularly described as follows: Commencing at the Northeast Corner of said NE/4 NE/4; thence S02°41'35"W, along the east line of said NE/4 NE/4, 292.03 feet to the Point of Beginning; thence continuing S02°41'35"W, along said east line, 184.13 feet; thence S44°01'57"W, 726.75 feet; thence N45°58'03"W, 265.00 feet to the easterly Right of Way line of Taylor Avenue; thence N44°01'57"E, along said easterly Right of Way line, 865.00 feet; thence S45°58'03"E, 143.38 feet to the Point of Beginning, containing 5.07 acres, more or less.

AND

TRACT 2:

Part of the Northwest—Quarter (NW/4) of the Northwest—Quarter (NW/4) of Section 10, T—7—N, R—31—W, Fort Smith, Sebastian County, Arkansas, more particularly described as follows: Commencing at the Northwest Corner of said NW/4 NW/4; thence S02°41'35"W, along the west line of said NW/4 NW/4, 292.03 feet to the Point of Beginning; thence S45°58'03"E, 121.62 feet; thence S44°01'57"W, 138.25 feet to said west line; thence N02°41'35"E, along said west line, 184.13 feet to the Point of Beginning, containing 0.19 acres, more or less.

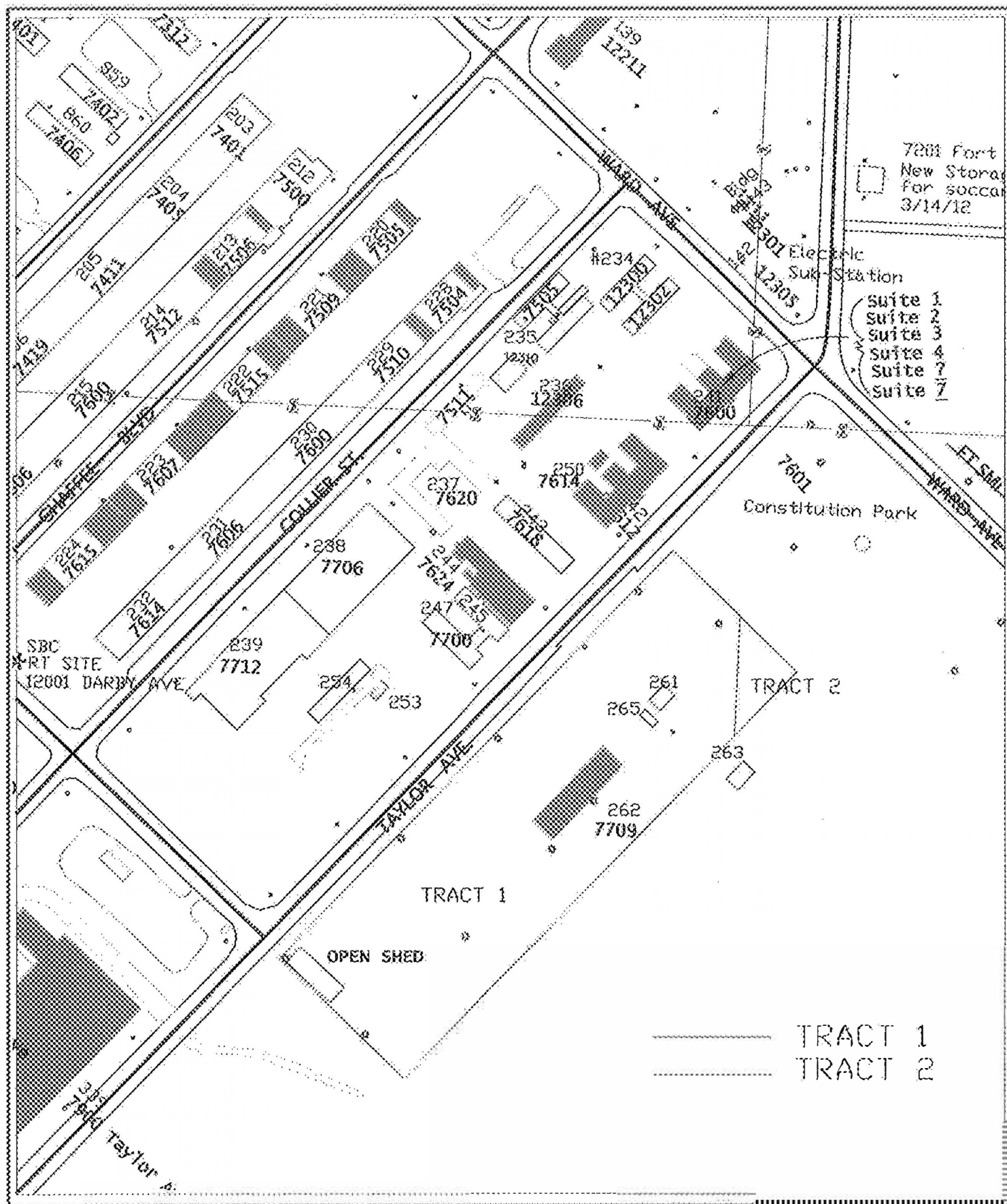


Exhibit A-7709 Taylor Avenue

RESOLUTION NO. R-147-12

**A RESOLUTION APPROVING THE ACCEPTANCE
OF A DEED FROM THE FORT CHAFFEE REDEVELOPMENT AUTHORITY
FOR APPROXIMATELY 62.9 ACRES OF LAND**

BE IT RESOLVED by the Board of Directors of the City of Fort Smith, Arkansas that:

The City of Fort Smith hereby accepts the attached deed from the Fort Chaffee Redevelopment Authority for approximately 62.9 acres of land. The Mayor, City Clerk, and City Administrator are hereby authorized to execute all documents necessary for the conveyance of said property, said documents being subject to review and approval by the City Attorney.

This Resolution passed this 29th day of June, 2012.


Mayor

ATTEST:


City Clerk

APPROVED AS TO FORM:


No Publication Required

Exhibit B - "RVSC"

R-14712



* 2 0 1 2 F - 1 1 0 1 2 9 *

2012F-11012

Certificate of Record

FORT SMITH DISTRICT

SEBASTIAN COUNTY, ARKANSAS

SHARON BROOKS, CO CLERK & RECORDER

07/09/2012

02:23:58PM

Fee: 0.00

Pages: 9

SPECIAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That **Fort Chaffee Redevelopment Authority**, an Arkansas Public Trust, Grantor, duly authorized by proper resolution of its Board of Trustees, in consideration of Ten and No/100 Dollars (\$10.00) and other valuable consideration, the receipt of which is hereby acknowledged, does hereby grant and convey unto the **City of Fort Smith**, Grantee, and unto its successors and assigns forever, subject to the reservations and restrictions and conditions hereinafter set forth, and subject to mineral leases and mineral reservations of record, the following described land (the "Lands") lying and being situated in the Fort Smith District of Sebastian County, Arkansas:

SEE EXHIBIT "A"

THIS CONVEYANCE IS MADE SUBJECT TO CERTAIN RESERVATIONS AND RESTRICTIONS AS SET FORTH ON EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF.

TO HAVE AND TO HOLD the same unto the City of Fort Smith and unto its successors and assigns forever, subject to the reservations, restrictions and conditions provided herein, together with all and singular the tenements, appurtenances and hereditaments thereunto belonging or in anywise appertaining.

Fort Chaffee Redevelopment Authority hereby covenants with Grantee that it will warrant and defend the title to the Lands against all claims and encumbrances done or suffered by or through it, but against none other.

Return to:

City of Fort Smith

4105-218

City Clerk's Office

P.O. Box 1908, 72902

Exhibit B - "RVSC"

IN WITNESS WHEREOF, Fort Chaffee Redevelopment Authority has caused these presents to be executed by its duly authorized Chairman and Secretary and Grantee, in acceptance of the covenants, reservations, conditions and exceptions, has caused these presents to be executed this 5th day of July, 2012.

GRANTOR:

FORT CHAFFEE REDEVELOPMENT AUTHORITY

By Dean Gibson
Dean Gibson, Chairman

ATTEST:

Robert Bradford
Robert Bradford, Secretary

APPROVED:

Ivy Owen
Ivy Owen, Executive Director

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF SEBASTIAN)

On this 5th day of January, 2012, before me, a Notary Public, duly commissioned, qualified and acting within and for said County and State, appeared in person the within-named Dean Gibson and Robert Bradford, to me personally well known, who stated that they are the Chairman and Secretary of the Fort Chaffee Redevelopment Authority, a public trust, and further stated that they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have set my hand and official seal this 5th day of July, 2012.

Pamela M. Hinder
NOTARY PUBLIC

My Commission Expires:
3/1/22



EXHIBIT "A"

REAL PROPERTY DESCRIPTION

Part of the Northwest Quarter of the Northwest Quarter, part of the Southwest Quarter of the Northwest Quarter, and part of the Northwest Quarter of the Southwest Quarter of Section 10, part of the Northeast Quarter of the Southeast Quarter, part of the Southeast Quarter of the Northeast Quarter, part of the Southwest Quarter of the Northeast Quarter, and part of the Northeast Quarter of the Northeast Quarter, of Section 9, Township 7 North, Range 31 West, Fort Smith, Sebastian County, Arkansas. Being more particularly described as follows:

Commencing at the Northwest Corner of said Northwest Quarter of the Northwest Quarter of Section 10; Thence along the West Line of said Northwest Quarter of the Northwest Quarter, S02°46'50"W, 292.66 feet; Thence S45°58'03"E, 121.64 feet to the Point of Beginning and an existing ½" rebar; Thence S77°19'54"E, 205.48 feet to a set ½" rebar with cap stamped MWC 1369; Thence S35°12'39"E, 198.00 feet to a set ½" rebar with cap stamped MWC 1369; Thence N54°47'21"E, 194.65 feet to the southerly right-of-way of Ward Avenue and a set ½" rebar with cap stamped MWC 1369; Thence along said right-of-way, S35°11'29"E, 290.44 feet to the military boundary and a set ½" rebar with cap stamped MWC 1369; Thence along said military boundary, S54°38'24"W, 49.28 feet to an existing brass cap stamped FC 452; Thence continuing along said military boundary, S19°53'56"W, 1811.42 feet to an existing brass cap stamped FC 452C; Thence continuing along said military boundary, S19°53'56"W, 345.37 feet to the northerly right-of-way of Roberts Boulevard and a set ½" rebar with cap stamped MWC 1369; Thence along said right-of-way and 116.99 feet along the arc of a curve to the right, said curve having a radius of 909.47 feet and being subtended by a chord having a bearing of N59°36'25"W and a distance of 116.91 feet to a set ½" rebar with cap stamped MWC 1369; Thence continuing along said right-of-way, N55°55'19"W, 1133.61 feet to a set ½" rebar with cap stamped MWC 1369; Thence continuing along said right-of-way, 246.47 feet along the arc of a curve to the right, said curve having a radius of 1401.77 feet and being subtended by a chord having a bearing of N50°53'05"W and a distance of 246.15 feet to a set ½" rebar with cap stamped MWC 1369; Thence continuing along said right-of-way, N45°50'51"W, 326.24 feet to a set ½" rebar with cap stamped MWC 1369; Thence continuing along said right-of-way, 47.10 feet along the arc of a curve to the right, said curve having a radius of 30.00 feet and being subtended by a chord having a bearing of N00°52'14"W and a distance of 42.41 feet to the easterly right-of-way of Taylor Avenue and a set ½" rebar with cap stamped MWC 1369; Thence along said easterly right-of-way, N44°06'22"E, 1158.69 feet; Thence leaving said right-of-way, S45°58'03"E, 265.71 feet to a set ½" rebar with cap stamped MWC 1369; Thence N44°01'57"E, 865.00 feet to the Point of Beginning. Containing 62.89 acres, more or less. Less and except minerals and mineral rights.

EXHIBIT "B"

I. THIS CONVEYANCE is made subject to the following reservations and restrictions which are essential to the use of the above described Lands and run with the land:

A. Land Use Restrictions.

1. The Chaffee Crossing Master Development Guidelines adopted by the Grantor and future amendments thereto.

B. Minerals. All oil and gas mineral rights are reserved by the Government in the Government Deed and are excluded from this conveyance.

C. Government Easements. Reservation by Grantor for itself, its successors and assigns of all easements and restrictions in the Government Deed.

D. Government Restrictions. This conveyance is subject to the easements, conditions and restrictions in the Government Deed, all of which are incorporated herein by reference and made a part hereof.

II. FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, Grantee covenant with Grantor that:

A. Deed Restriction. The real property specifically described herein conveyed to the Grantee, and all successors and assigns of Grantee, shall not be annexed into any other municipality without the consent of the municipality in which it is presently located for a period of sixty (60) years from July 1, 2002. By acceptance of this Deed, during that period of time, the Grantee and all successors and assigns of the Grantee, forever waive and disclaim, and agree to forego and forebear, any right to request annexation, or to become annexed into, any other municipality whether that right is derived from Act 779 of the 1999 Arkansas General Assembly or any other statutory or common law of the State of Arkansas or the United States. This covenant is intended to and shall be a covenant running with the land.

III. This conveyance is specifically conditioned on the following:

1. **CERCLA Covenants and Notice.** Pursuant to Sections 120(h)(3) and 120 (h)(4) of the CERCLA:

A. Notification and Covenants. The United State of America (the, "Government") has notified the Grantor that to the extent such information is available on the basis of a complete search of agency files, there was no storage and release of hazardous substances, petroleum, petroleum products or their derivatives on certain portions of the Fort Chaffee land that the Government conveyed to Grantor ("Property"), and there was storage and release of hazardous substances on other portions of the Property. For the purpose of this Deed, "hazardous substances" shall have the same meaning as section 101(14) of CERCLA. Available information regarding the type, quantity and location of the hazardous substances found on the Lands and action taken is contained in "Notice of Petroleum Product Storage, Release, or Disposal" that is at Exhibit E to the Government Deed. The information regarding said storage and release indicates that there is no threat to human health or the environment on the Lands.

B. Access Rights and Easement

The Government reserves a right and easement for access to the Lands in any case in which remedial action or corrective action is found to be necessary after the date of the Government Deed. Any such actions undertaken by the Government pursuant to this Section 1(B) will, to the maximum extent

practicable, be coordinated with a representative of the Grantee, its successors and assigns. Grantee agrees that, notwithstanding any other provisions of the Deed, that the Government and the Grantor assume no liability to the Grantee, its successors and assigns, or any other person, should remediation of the Lands interfere with the use of the Lands by the Grantee, its successors and assigns.

C. Transfer Documents

The Grantee and its successors and assigns covenants and agrees that all leases, transfers or conveyances of the Lands occurring subsequent to the date of this Deed shall be made subject to, and shall have the benefit of, the provisions contained in this Section 1.

2. Environmental Baseline Survey ("EBS") and Finding of Suitability to Transfer ("FOST")

A. The Grantor has made available to the Grantee the technical environmental reports, including the Environmental Baseline Study ("EBS") dated October 7, 1996, FOST I dated June 1, 2000, and FOST II dated August 9, 2000, FOST III dated December 20, 2000, FOST IV dated May 9, 2001, and FOST V dated May 15, 2003 prepared by the Government, and agrees, that these documents accurately describe the environmental condition of the Lands. The Grantee has inspected the Lands and accepts the physical condition and current level of environmental hazards on the Lands and deems the Lands to be safe for the Grantee's intended use. If an actual or threatened release of a hazardous substance or petroleum product is discovered on the Lands after the date of the conveyance, whether or not such substance was set forth in the technical environmental reports, including the EBS, Grantee or its successors or assigns shall be responsible for such release or newly discovered substance unless Grantee is able to demonstrate that such release or such newly discovered substance was due to the Government's or Grantor's activities, ownership, use, or occupation of the Lands or other property (now owned or previously owned by the Government) surrounding the Lands. Grantee, its successors and assigns, as consideration for the conveyance, agree to release the Government and the Grantor from any liability or responsibility for any claims arising solely out of the release of any hazardous substance or petroleum product on the Lands occurring after the date of this Deed, where such substance or product was placed on the Lands by the Grantee, or its successors, assigns, employees, invitees, agents or contractors, after this conveyance. This Section 2 shall not affect the Government's responsibilities to conduct response actions or corrective actions that are required by applicable laws, rules and regulations or the Government's indemnification obligations under applicable laws.

B. All covenants and land use restrictions shall inure to the benefit of the public in general and adjacent lands, including lands retained by the United States, and, therefore, are enforceable by the United States Government and the State of Arkansas. These restrictions and covenants are binding on the Grantee, their successors and assigns; shall run with the land; and are forever enforceable.

C. The Grantee covenants for itself, its successors and assigns, that it shall include and otherwise make legally binding all land use restrictions herein in each subsequent lease, transfer or conveyance document subject hereto. Notwithstanding this provision, failure to include these land use restrictions in subsequent conveyances does not abrogate the status of these restrictions as binding upon the parties, its successors and assigns.

D. The Grantee, for themselves, its successors and assigns, covenants that it will not undertake or allow any activity on or use of the Lands that would violate the land use restrictions contained herein.

3. Notification of Ordnance and Explosives ("OE") and Covenant.

A. Fort Chaffee is a former military installation with a history of OE use and, therefore, there is a potential for OE to be present on the Lands.

B. Based on a review of existing records and available information, none of the buildings or Lands are known to contain high explosive unexploded ordnance ("UXO"). However, blank small arms ammunition may exist on the Lands. The risk from blank ammunition is negligible since no projectile or high explosive is present. In the event the Grantee, its successors, and assigns, should discover any UXO on the Lands, it shall not attempt to remove or destroy it, but shall immediately contact the nearest County Sheriff or local law enforcement agency who will, if needed, contact the Department of Defense Explosive Ordnance Disposal (EOD) unit. Appropriate GOVERNMENT or GOVERNMENT designated explosive ordnance personnel will be dispatched promptly to dispose of such UXO at no expense to the Grantee. The Grantee, or its successors or assigns, shall: (i) cooperate with the GOVERNMENT with regard to the location of and removal of UXO from the Lands, provided such cooperation does not require the Grantee, or its successors or assigns, to incur any non-reimbursed direct costs, (ii) notify the GOVERNMENT as soon as reasonably possible after the discovery of any UXO by the Grantee, or its successors or assigns, and (iii) take no actions regarding UXO discovered on the Lands, except as may be specifically directed by the GOVERNMENT.

4. Notice of Endangered Species and Covenant.

A. The Grantee is hereby informed and does acknowledge the presence of an endangered species, the American Burying Beetle (ABB) (*Nicrophorus americanus*), on the Lands.

B. The Grantee covenants and agrees that its use and occupancy of the Lands will be in compliance with the Endangered Species Act (ESA) of 1973, as amended, (16 U.S.C. § 1531-1544; 50 CFR Parts 17, 401-424, 450-453). The ESA requires protection of threatened or endangered species by prohibiting activities and facilities that would have an adverse effect on them. Any activity or disturbance of the Lands by the Grantor prior to this conveyance that causes a violation of the ESA shall be the responsibility of the Grantor.

C. Section 9 of the ESA and federal regulations pursuant to section 4(d) of the ESA prohibit the take of endangered and threatened species, respectively without special exemption. Under the terms of Section 7(b)(4) and Section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the ESA provided that such taking is in compliance with the terms and conditions of this incidental take statement.

D. Certain non-discretionary measures undertaken by the Department of the Army at Fort Chaffee (Army) are binding conditions upon Grantee for the exemption in Section 7(o)(2) to apply. Required consultation with the U.S. Fish and Wildlife Service (USFWS) has been completed. Based on the Biological Opinion issued in June, 1999 (Exhibit H to the Government Deed), certain "reasonable and prudent measures" are necessary to minimize impacts of incidental take of ABB's in the EDC areas and must be incorporated as restrictions in the deed. Accordingly, the Grantee covenants that the following "reasonable and prudent measures" will be adhered to immediately upon transfer of property to protect the ABB and its habitat:

(1) Undeveloped areas should not be cleared until construction is ready to commence. In addition, unnecessary clearing of trees or other vegetation during site preparation should be avoided.

(2) Whenever practical, construction and other ground disturbance activities shall be conducted during the non-breeding season, October through April.

(3) Because of the sensitivity of the ABB to chemical applications, the Grantee shall ensure that the use of pesticides and herbicides is limited. Only those pesticides and herbicides on the list approved by the USFWS shall be used.

E. The Grantee further agrees that it shall not permit the occupancy or use of any buildings, facilities or structures on the Lands without complying with the ESA, and all applicable federal, state, and local laws and regulations pertaining to endangered species.

F. Any questions concerning reasonable and prudent measures should be directed to the U.S. Fish and Wildlife Service, Arkansas Field Office; 1500 Museum Road, Suite 105; Conway, AR 72032, telephone 501-513-4477, or to its successor.

5. Inclusion of Provisions.

The Grantee, its successors and assigns, or any entity to whom the Lands are transferred shall neither transfer the Lands, lease the Lands, nor grant any interest, privilege, or license whatsoever in connection with the Lands without the inclusion of the environmental protection provisions contained herein, and shall require the inclusion of such environmental protection provisions in all further deeds, transfers, leases, or grants or any interest, privilege or license.

6. Air Navigation Restriction.

The Fort Smith Municipal Airport is in close proximity to the Lands. The Lands lie within the area of protected airspace that normally extends for a five nautical mile radius around the airfield. Accordingly, in coordination with the Federal Aviation Administration (FAA), the Grantee covenants and agrees on behalf of it, its successors and assigns and every successor in interest to the Lands herein described, or any part thereof, that, Grantee will comply with Title 14, Code of Federal Regulations, Part 77, entitled Objects Affecting Navigable Airspace, or under the authority of the Federal Aviation Act of 1968, as amended.

7. Notice of Non-Discrimination.

With respect to activities related to the Lands, the Grantee covenants for itself, its successors and assigns, that the Grantee, and such successors and assigns, shall not discriminate upon the basis of race, color, religion, sex, age, handicap, or national origin in the use, occupancy, sale or lease of the Lands, or in its employment practices conducted thereon in violation of the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. Section 2000(d)); the Age Discrimination Act of 1975 (42 U.S.C. Section 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794). The GOVERNMENT shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the Lands hereby conveyed, and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

ACKNOWLEDGMENT

Grantee hereby acknowledges that this conveyance is subject to the reservations and restrictions set forth hereinabove on Exhibit "B" and Grantee covenants and agrees that all leases, transfers or conveyances of any part of the property hereby conveyed shall be made subject to these same reservations and restrictions.

Grantee:

CITY OF FORT SMITH

By: Sandy Sanders
Sandy Sanders, Mayor

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss
COUNTY OF SEBASTIAN)

On this 10th day of u, 2012, before me, a Notary Public within and for the aforesaid county and state, duly commissioned and acting, appeared Mayor Sandy Sander, to me personally well known as, or proven to be, the person whose name appears upon the within and foregoing document and he respectively acknowledged to me that he had executed the same for the consideration and purposes therein mentioned and set forth and in the capacity therein stated, and I do so certify.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal of office as such Notary Public at the County and State aforesaid on this 10 day of July, 2012.

My Commission Expires
10-5-2019



Heather James
Notary Public

Exhibit B - "RVSC"



NEWS CONTACT
Karen Santos, Communications
479.784.2230 / karen.santos@fortsmithar.gov

FOR IMMEDIATE RELEASE

FORMER “RIVER VALLEY SPORTS COMPLEX” LAND OFFERED FOR SALE

(October 22, 2019, Fort Smith, AR) — The City of Fort Smith has put up for sale two parcels of land in the Chaffee Crossing area. A smaller, rectangular tract at 7709 Taylor Avenue runs east-west along Taylor and measures 5.26 acres. That acreage abuts a larger 62.9 acre plot between Taylor Avenue, Ward Avenue, and Roberts Boulevard—what was to have become the River Valley Sport Complex (RVSC). Together, the two adjacent tracts total 68.16 acres.

Legal notice of the offer for sale appears in today’s *Times Record* and the Request for Bids is posted on the City website at [COFS Purchasing](#). (See “[Bid Solicitations](#)” folder, bottom left.) Sealed bids are due no later than 2:00 p.m. on Tuesday, November 5, 2019, at City of Fort Smith Municipal Offices, 623 Garrison Avenue, Room 512.

“At this point, the best thing to do is offer the land for sale and recoup whatever public monies we can that were lost when RVSC failed,” said City Administrator Carl E. Geffken. “Our RFP (Request for Proposals) last year, seeking a contractor or developer to step in and finish the sports complex or do something similar, attracted one proposal. We worked with that party for several months but just couldn’t help them develop their proposal into something viable for both them and the City,” Geffken said.

The River Valley Sports Complex (RVSC) project first surfaced in 2011. A former Sebastian County Election Commission Chair and a former State Senator, working in partnership, promised delivery of a tournament-quality softball complex that would economically benefit the entire region. The plan was for the RVSC project partnership to leverage the City’s financial investment, using it to attract private and nonprofit monetary and in-kind contributions for the balance what was needed to completely fund the project.

###

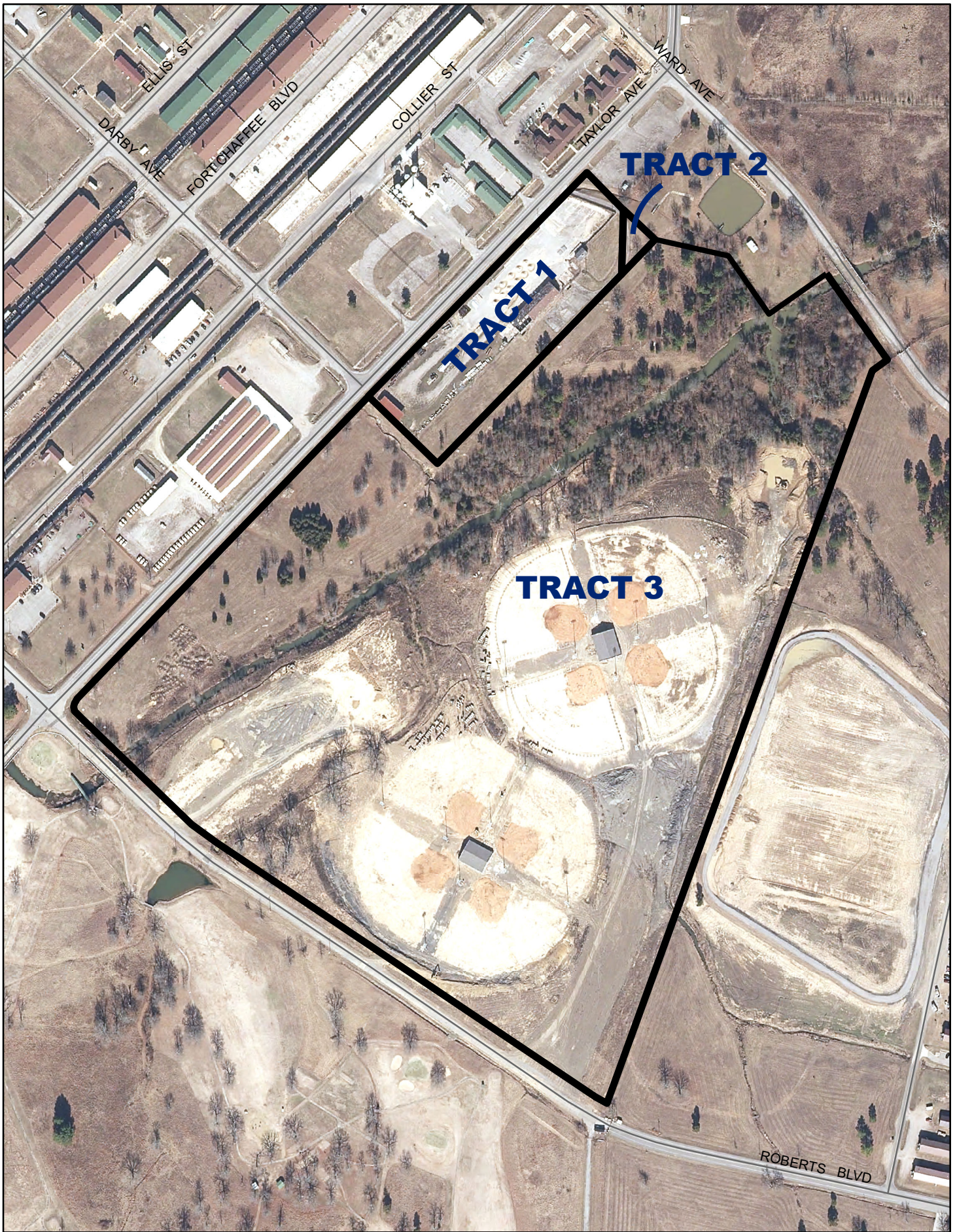


Exhibit C